



PATENT  
ATTORNEY DOCKET NO. 74622-010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : BRESLOW, Stuart Lee et al.  
Serial No. : 09/476,448  
Filed : December 30, 1999  
Title : **ON-LINE TRADING SYSTEM**  
Examiner : Andrew J. Rudy  
Group Art Unit : 3627

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Petition For Revival Of An Application Abandoned Unavoidably Under 37 C.F.R. 1.137(a)  
OR, IN THE ALTERNATIVE,  
Conditional Petition For Revival Of An Application Abandoned Unintentionally  
Under 37 C.F.R. 1.137(b)**

Sir:

**PART A**

**Petition For Revival Of An Application Abandoned Unavoidably Under 37 C.F.R. 1.137(a)**

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office (specifically, the Office Action dated August 3, 2005). The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained (i.e., November 3, 2005).

Applicants hereby petition for revival of this Application for unavoidable delay.

This grantable petition includes the following items:

(1) Petition fee

The Commissioner is authorized to charge the Petition fee, as well as any other necessary LARGE ENTITY fees, to Deposit Account No. 16-2500.

(2) Reply

Applicants are submitting herewith (a) a paper entitled AMENDMENT IN RESPONSE TO AUGUST 3, 2005 OFFICE ACTION FILED WITH PETITION TO REVIVE, which constitutes a complete reply to the Office Action dated August 3, 2005.

(3) Because this Application was filed on or after June 8, 1995, no Terminal Disclaimer is required.

(4) Adequate showing of the cause of unavoidable delay

Applicants are submitting herewith the following papers, with attached exhibits, which provide an adequate showing of the cause of unavoidable delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of this grantable petition under 37 CFR 1.137(a) was unavoidable, i.e., the United States Patent and Trademark Office mailed the Office Action of August 3, 2005 to the wrong address, and Applicants and their representatives had no reasonable way of knowing of the existence of this Office Action until receiving a Notice of Abandonment on September 27, 2006:

(b) DECLARATION OF GREGG GOLDMAN

(c) DECLARATION OF JOHN C. STELLABOTTE

(d) DECLARATION OF ELIZABETH TAVAREZ

**Argument**

The standard for showing “unavoidable delay” is defined in MPEP § 711.03(c) (pages 700-202-203) as being the “reasonably prudent person” standard.

The attached Declarations and their exhibits demonstrate the following:

(1) Prior to February 4, 2005, Applicants were represented by attorneys at the following correspondence address:

Leslie Gladstone Restaino Esq.  
Brown Raysman Millstein Felder & Steiner LLP  
163 Madison Avenue  
P.O. Box 1989  
Morristown, NJ 07962-1989

(2) On February 4, 2005, Applicants properly filed a change of address to their in-house attorney at the following correspondence address:

Gregg Goldman  
UBS AG, Stamford Branch  
677 Washington Blvd.  
Stamford, CT 06901

(3) On February 27, 2006, the USPTO mailed a "NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY" to:

Gregg Goldman  
UBS AG, Stamford Branch  
677 Washington Blvd.  
Stamford, CT 06901

This Notice further states it is "in response to the Power of Attorney filed 02/04/2005. The Power of Attorney is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33."

(4) On May 20, 2005, Applicants filed, by facsimile transmission, a new Power of Attorney and Correspondence Address Indication Form, executed by Gregg Goldman on May 20, 2005, directing that all future correspondence be directed to the address associated with Customer Number 21890, i.e., to Proskauer Rose LLP, 1585 Broadway, New York, NY 10036.

Applicants concurrently filed other papers with this power, all giving the above-identified address of Proskauer Rose LLP as the correspondence address.

(5) On June 1, 2005 and July 6, 2005, Applicants refiled this new Power. On both occasions, Applicants' facsimile transmission report indicated "OK" reception of the Power.

(6) Despite the instructions to address all future communications to Gregg Goldman on February 4, 2005, and the later instructions to address all future communications to Proskauer Rose LLP, on August 3, 2005, the USPTO mailed an Office Action in the Application to the following address:

Leslie Gladstone Restaino Esq.  
Brown Raysman Millstein Felder & Steiner LLP  
163 Madison Avenue  
P.O. Box 1989  
Morristown, NJ 07962-1989

Page 2 of the Office Action states that it is "Responsive to communication(s) filed on 20 May 2005," that is, responsive to the papers filed by Proskauer Rose LLP.

(7) On September 22, 2006, a Notice of Abandonment in the Application was mailed by the United States Patent and Trademark Office to Gregg Goldman at the following address:

Gregg Goldman  
UBS AG, Stamford Branch  
677 Washington Blvd.  
Stamford, CT 06901

The Notice of Abandonment states that the Application is abandoned in view of Applicants' "failure to timely file a proper reply to the Office Letter mailed on 03 August 2005." It was received by Gregg Goldmann on September 27, 2006. This Office Action dated August 3, 2005 was never forwarded by anyone at the Brown Raysman law firm to Gregg Goldman or to the Proskauer Rose law firm or any other representative of Applicants.

(8) Prior to receipt of the Notice of Abandonment dated September 22, 2006, neither Gregg Goldman nor anyone at the Proskauer Rose law firm was aware of or ever received the Office Action dated August 3, 2005.

(9) Since September 27, 2006, Applicants and their representatives have worked diligently to obtain the facts, determine the proper course of action, and to prepare this Petition, the accompanying Declarations and their exhibits, and the accompanying Amendment, so as to provide a grantable petition to revive.

Applicants respectfully submit that under the “reasonably prudent person standard,” they have made an adequate showing of the cause of unavoidable delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of this grantable petition under 37 CFR 1.137(a) was unavoidable, i.e., the United States Patent and Trademark Office mailed the Office Action of August 3, 2005 to the wrong address, and Applicants and their representatives had no reasonable way of knowing of the existence of this Office Action until receiving a Notice of Abandonment on September 27, 2006.

Therefore, the United States Patent and Trademark Office is respectfully requested to revive this application for unavoidable delay and to return the application to the Examiner for further prosecution in accordance with the concurrently submitted Amendment.

#### **PART B**

#### **Conditional Petition For Revival Of An Application Abandoned Unintentionally Under 37 C.F.R. 1.137(b)**

In the event that the United States Patent and Trademark Office determines that the above-discussed evidence is insufficient to establish unavoidable delay, Applicants hereby petition for revival of this Application for unintentional delay. This grantable petition includes the following items:

- (1) Petition fee

The Commissioner is authorized to charge the Petition fee, as well as any other necessary LARGE ENTITY fees, to Deposit Account No. 16-2500.

(2) Reply

Applicants are submitting herewith (1) a paper entitled AMENDMENT IN RESPONSE TO AUGUST 3, 2005 OFFICE ACTION FILED WITH PETITION TO REVIVE, which constitutes a complete reply to the Office Action dated August 3, 2005.

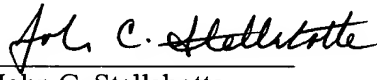
(3) Because this Application was filed on or after June 8, 1995, no Terminal Disclaimer is required.

(4) The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

Therefore, the United States Patent and Trademark Office is respectfully requested to revive this application for unintentional delay and to return the application to the Examiner for further prosecution in accordance with the concurrently submitted Amendment.

Respectfully submitted,

PROSKAUER ROSE LLP  
Attorneys for Applicants

By   
John C. Stellabotte  
Reg. No. 47,969

Date: November 2, 2006

PROSKAUER ROSE LLP  
1585 Broadway  
New York, NY 10036-8299  
Telephone: (212) 969-3000

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

**FEE TRANSMITTAL**  
**For FY 2006**☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$)**Complete if Known**

Application Number	09/476,448
Filing Date	December 30, 1999
First Named Inventor	BRESLOW, Stuart Lee, et al.
Examiner Name	Andrew J. Rudy
Art Unit	3627
Attorney Docket No.	74622-010

**METHOD OF PAYMENT (check all that apply)**
☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_

☒ Deposit Account Deposit Account Number: 16-2500 Deposit Account Name: Proskauer Rose, LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee  
☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
- 20 or HP =	x	=				

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x	=	

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other: Petition for Revival of an Application Abandoned Unavoidably / Unintentionally**SUBMITTED BY**

Signature	<u>John C. Stellabotte</u>	Registration No. (Attorney/Agent) 47,969	Telephone
Name (Print/Type)	John C. Stellabotte		Date November 2, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.